U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

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[redacted]

JAN 09 2007

FILE: LIN 04 205 52107 Office: NEBRASKA SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability. The petitioner seeks employment as an attorney. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as an alien of exceptional ability or a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner made several assertions. He also indicated that he would submit a brief and/or evidence to this office within 30 days. The petitioner dated the appeal December 8, 2005. As of this date, more than a year later, this office has received nothing further. The appeal will be adjudicated based on the statements on the Form I-290B Notice of Appeal. For the reasons discussed below, we uphold the director's ultimate decision although we withdraw some of the standards set forth by the director.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

It appears from the record that the petitioner seeks classification as an alien of exceptional ability although he has never explained how he meets the requisite three out of six regulatory criteria set forth at 8 C.F.R. § 204.5(k)(3)(ii). The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner earned a Bachelor of Laws from the University of Sierra Leone in 1998

and a "Master Certificate" from the University of Teramo in 2002. The petitioner did not submit an evaluation of these foreign credentials. The director did not contest that the petitioner qualifies for the classification sought either as an alien of exceptional ability or an advanced degree professional. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

The director quoted the above language and stated that the record did not establish that the petitioner's "credentials exceed those of all aliens who seek to qualify as aliens of 'exceptional ability,' as that terms is defined" at 8 C.F.R. § 204.5(k)(3)(ii). The director, however, ignores that the national interest waiver is available to both aliens of exceptional ability *and* advanced degree professionals. We know of no legal authority that requires an advanced degree professional to demonstrate that his *credentials* exceed those of *all* aliens seeking classification as aliens of exceptional ability to secure a national interest waiver. Rather, the *benefit* of this alien's entry into the United States must exceed the benefit inherent in admitting aliens of exceptional ability. For example, the benefit for aliens of exceptional ability not seeking a national interest waiver is not necessarily national in scope for each alien. *See Matter of New York State Dep't of Transp.,* 22 I&N Dec. 215, 217, n.3. (Comm. 1998.)

Matter of New York State Dep't. of Transp., 22 I&N Dec. at 215, has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national

interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

We concur with the director that the petitioner proposes to work in an area of intrinsic merit, the legal profession. Next, we must consider whether the proposed benefits will be national in scope. In response to the director's request for additional evidence, the petitioner asserted that he would bring great diversity to the legal community and make the legal system accessible to underrepresented communities. The petitioner indicated that he specializes in immigration, family, criminal and insurance law and volunteers at the Neighborhood Legal Clinics. The director concluded that the proposed benefits of the petitioner's work would not be national in scope but would only benefit his local geographic area.

On appeal, the petitioner asserts that the director "made a wrong judgment in assuming that [the petitioner's] practice is limited to only the local geographical area." The petitioner asserts that his practice is national. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici,* 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California,* 14 I&N Dec. 190 (Reg. Comm. 1972)). Even assuming that the petitioner has clients from beyond his local area, he still cannot demonstrate that the impact of his services will be sufficiently national in scope.

Matter of New York State Dep't of Transp., 22 I&N Dec. at 217, n.3, provides the following guidance:

> For instance, pro bono legal services as a whole serve the national interest, but the impact of an individual attorney working pro bono would be so attenuated at the national level as to be negligible.

Thus, *Matter of New York State Dep't of Transp.*, 22 I&N Dec. at 217, provides clear guidance applicable in this matter. That case is a designated precedent and, thus, binding on all Citizenship and Immigration Services (CIS) employees. 8 C.F.R. § 103.3(c).

The assertion that the petitioner's cultural background in and of itself warrants a waiver of the labor certification process is not persuasive. The fact that the petitioner happens to originate from The Gambia and, thus, has international cultural experiences, is not evidence that he has or will make an impact on the field of law other than to benefit his specific clients, which, while having intrinsic merit, is not national in scope. If CIS were to accept that the petitioner's cultural experiences warrant approval of the waiver, CIS would need to approve the waiver for every alien with a degree in a profession that provides services to the public (lawyers, social workers, therapists, doctors,

psychologists, etc.) The petitioner has not established that Congress intended the national interest waiver to serve as a blanket waiver for all aliens providing services to the public.

It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications. Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *Matter of New York State Dep't of Transp.*, 22 I&N Dec. at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6.

The only evidence of the petitioner's specific achievements is his own statement chronicling his legal career. He emphasizes that he passed the Washington State Bar without having attended law school in the United States, but fails to explain how that personal achievement is significant to the field of law in general. While the petitioner may have several years of experience as a lawyer both in Africa and in the United States, the regulations indicate that ten years of progressive experience is one possible criterion that may be used to establish exceptional ability. 8 C.F.R. § 204.5(k)(3)(ii)(B). Because exceptional ability, by itself, does not justify a waiver of the job offer/labor certification requirement, arguments hinging on the degree of experience required for the profession, while relevant, are not dispositive to the matter at hand. *Matter of New York State Dep't of Transp.*, 22 I&N Dec. at 222.

The petitioner has noted that he is self-employed. CIS acknowledges that there are certain occupations wherein individuals are essentially self-employed, and thus would have no U.S. employer to apply for an alien employment certification. While this fact will be given due consideration in appropriate cases, the inapplicability or unavailability of an alien employment certification cannot be viewed as sufficient cause for a national interest waiver; the petitioner still must demonstrate that the self-employed alien will serve the national interest to a substantially greater degree than do others in the same field. *Id.* at 218, n. 5.

The petitioner has not provided evidence that he has authored treatises, major texts, influential law review articles or otherwise influenced the field of law. He has not demonstrated that he has created a model for pro bono work that has influenced legal clinics nationwide. Without such evidence, he

cannot demonstrate that a waiver of the alien employment certification is warranted in the national interest.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by an alien employment certification certified by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.